



June 4, 1999

Mr. Robert E. Hager  
Nichols, Jackson, Dillard, Hager & Smith  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR99-1548

Dear Mr. Hager:

You have asked whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124706.

The DeSoto Police Department (the “department”), which you represent, received an open records request for all police records pertaining to a named individual. You seek to withhold the requested records pursuant to section 552.108 of the Government Code.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise section 552.101 of the Government Code, which protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Gov’t Code § 552.352. Section 552.101 of the Government Code protects information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

We note that although the requestor made reference to an automobile accident in his open records request, he did not specifically request any of the department’s records pertaining to that accident, but rather sought all records pertaining to the named individual. To the extent that the requestor is seeking all department records in which the named individual is identified as a “suspect,” the requestor, in essence, is asking that the department compile that individual’s criminal history. Where an individual’s criminal history information has been

compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). The department, therefore, must withhold pursuant to section 552.101 all incident reports or other police records in which the referenced individual has been identified as a suspect.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/RWP/eaf

Ref.: ID# 124706

cc: Mr. Daniel D. Durfey  
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